

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID L. FISH, JR.,

Plaintiff,

v.

MARINE BIOLOGICAL LABORATORY,

Defendant.

Civ. A. No. 05-11619-RGS

**PLAINTIFF'S OPPOSITION TO THE DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS AND REASONS WHY THE MOTION
SHOULD NOT BE GRANTED**

Pursuant to Local Rule 7.1 (b)(2), Plaintiff submits to this Court this Opposition To The Defendant's Motion For Judgment On The Pleadings And Reasons Why The Motion Should Not Be Granted and accompanying exhibits evidencing facts on which the Plaintiff's opposition to the Defendant's motion is based.

The Plaintiff moves this Court to reject the Defendant Marine Biological Laboratory's Motion For Judgment On The Pleadings for the following reasons:

1. **Plaintiff Can Prove Facts to Support All of His Claims of Discrimination.**

The Plaintiff states to this Court that based on the facts presented in the pleadings, the Plaintiff can provide this Court with an abundance of evidentiary documents to prove facts in support of his claim that entitle him to relief under the Federal Equal Pay Act,

Title VII of the Civil Rights Act of 1964, and Massachusetts General Laws Chapter 151B or the Massachusetts Equal Pay Act.

2. The Plaintiff Can Establish A Prima Facie Case of Discrimination.

The Plaintiff can prove to this Court a prima facie case of wage discrimination. The Plaintiff can establish that the Defendant paid different wages to a member of the opposite sex for substantially equal work. The Plaintiff can prove to this Court that there exist at least three distinct levels of Grade 7 Front Office Assistants who are employed by the Defendant (see Exhibit 1 attached), and the Plaintiff can prove to this Court that the level of skill, effort, and responsibility that the Defendant requires the Plaintiff to perform fall within the range of skill, effort, and responsibility that the Defendant requires of the varying levels of the female Grade 7 Front Office Assistants.

3. The Terms of the CBA Cannot Provide the Defendant an Affirmative Defense to the Plaintiff's Discrimination Claims.

An employer's assertion that a compensation differential is attributable to a collective agreement does not constitute a defense under EPA. The EPA specifically provides that no labor organization "shall cause or attempt to cause" a covered employer to violate the statute. 29 U.S.C. 206 (d)(2).

An employer's assertion that its compensation rates are based on a job classification system does not, by itself, justify a compensation disparity between men and women performing substantially equal work. The employer must prove that the job classification system accurately reflects job duties and/or job-related employee

qualifications and is uniformly applied to men and women. *Aldrich*, 963 F .2d at 525 (job classification system does not justify compensation disparity unless it is rooted in legitimate business-related differences in work responsibilities and qualifications for the particular positions at issue).

4. Plaintiff Can Prove Facts to Support His Claims of Retaliation.

The Plaintiff can prove to this Court that prior to the Plaintiff's discrimination complaints made to the Defendant's Equal Employment Opportunity Coordinator, the Plaintiff and other male Watchpersons were frequently assigned overtime hours by Ms Beckwith. In fact, the Plaintiff can prove to this Court that the exchange of working hours between the male Watchperson's and the female Front Office Assistants were of a frequent and casual nature prior to the Plaintiff's complaints.

The Plaintiff can prove to this Court that following his discrimination complaints to the Defendant's Equal Employment Opportunity Coordinator, virtually all overtime hours assigned by Ms Beckwith were assigned to the female Front Office Assistants and other female workers who worked under her supervision.

5. Defendant's Actions Diminished the Administrative Remedies of the CBA Available to the Plaintiff.

The Defendant's Equal Employment Opportunity Coordinator Jane MacNeil failed to respond to the Plaintiff's complaints of discrimination made on January 25, 2004 and January 28, 2004 until February 10, 2004 which is after the 10 day deadline

designated by the CBA in order for the Plaintiff to file a grievance. The Plaintiff's complaints made to Ms MacNeil followed the Defendant's Equal Opportunity, Affirmative Action, And Diversity Policy. (see Exhibit 2 attached).

Ms Beckwith's glass ceiling practices of assigning work and training opportunities made it highly unlikely that any appeal by the Plaintiff to the Grading Committee as outlined in the CBA would result in the Plaintiff receiving an upgrade.

WHEREFORE, Plaintiff moves that the Court:

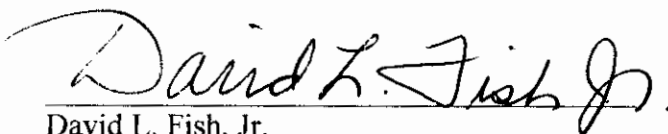
- (1) Reject the Defendant's Motion For Judgment On The Pleadings;
- (2) Order such relief as is just and proper.

REQUEST FOR ORAL ARGUMENT

Because the Plaintiff believes that oral argument will assist the Court in deciding this matter, he respectfully requests a hearing as to his Opposition to the Defendant's Motion For Judgment On The Pleadings.

David L. Fish Jr.

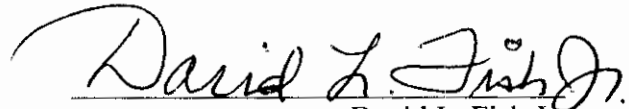
Pro se,



David L. Fish, Jr.
63 Harriette Road
E. Falmouth, MA 02536
(508) 540-6014

LOCAL RULE 7.1(A)(2) CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), Plaintiff David L. Fish Jr. certifies that he has contacted the Defendant's counsel in an attempt to resolve or narrow the issues addressed in this Opposition to the Defendant's Motion for Judgment on the Pleadings.

A handwritten signature in black ink, reading "David L. Fish Jr.", written over a horizontal line.

David L. Fish Jr.
63 Harriette Rd.
E. Falmouth, MA
02536
(508) 540-6014

Dated: October 20, 2005



M A R I N E B I O L O G I C A L L A B O R A T O R Y

7 MBL STREET • WOODS HOLE • MASSACHUSETTS • 02543-1015 • (508) 548-1700

HUMAN RESOURCES

Phone: 508-548-7422

Email: resume@mbledu

POSITION ANNOUNCEMENT

DATE: October 23, 2001

POSITION: FRONT OFFICE ASSISTANT
On-Call
Temporary, Grade 7, Non Exempt

A temporary position is available to work on-call basis to provide general office assistance in the Housing and Conference Services Department. Hours are as needed to fill in for other staff members and may include evening and weekend hours.

DUTIES: Duties include, but are not limited to: greeting guests of the MBL, processing check-ins, check-outs and payments; answering and directing telephone calls as required; issuing parking permits, assisting with housing application processing.

EDUCATION/EXPERIENCE: High School degree plus a minimum of 2 years customer service experience required. Previous experience working as an effective member in a team environment required. Must have computer skills preferably with Windows NT, 98 or 2000. Experience in a hotel setting desirable. Must have excellent clerical and organizational skills. Must demonstrate a pleasant and cooperative manner with strong telephone and interpersonal skills. Must be self-motivated, flexible and able to communicate effectively to guests, staff and supervisor. Must demonstrate common sense and logical thinking when dealing with multiple priorities.

APPLICATION DEADLINE: Until a suitable candidate is identified.

Apply to: Marine Biological Laboratory, Human Resources, reference code [FOA],
7 MBL Street, Woods Hole, MA 02543-1015, (508) 289-7422, email resume@mbledu

An Equal Opportunity/Affirmative Action Employer/Non-smoking workplace.

10/23/01
CV. A. No. 05-11619-RGS

Sally / Nemo

**Marine Biological Laboratory
Position Description**

Date: November 15, 2000

Page:

Title: Front Office Assistant (Evening/Weekend)

Revision:

Position Code:

Grade: 7 Non Exempt

Reports to: Director of Housing Services and Conferences

EEO Code:

Job Summary: This position greets and processes clients of the Marine Biological Laboratory, provides office management functions, and is responsible for the daily financial processes of the Office of Housing and Conferences.

Major Duties:

- 1) Greet and process clients of the MBL.
- 2) Process client payments for Housing and Conferences.
- 3) Perform functions related to the preparation of daily audit including processing check ins and check outs and running and verifying accuracy of pre-audit report.
- 4) Answer and direct calls from switchboard and two way radio. Answer and direct calls from office telephones as needed.
- 5) Communicate with watchperson staff as needed.
- 6) Issue laboratory keys.
- 7) Schedule meeting rooms for use by internal and external clients.
- 8) Handle customer complaints.
- 9) Assist as required in providing services to conference groups.
- 10) Assist with emergencies. Contact appropriate personnel and write incident reports as needed.
- 11) Perform clerical duties as needed.
- 12) Assist with the training of evening/weekend front desk staff.
- 13) Perform other duties as required and/or assigned.

Skills Required:

Must have computer skills preferably with Windows NT and word processing. Previous customer service experience required. Previous experience in a hotel setting desirable. Must have excellent organizational and clerical skills. Must demonstrate strong interpersonal skills and a pleasant and cooperative manner. Must be self-motivated, flexible, and able to communicate effectively with diverse populations. Must be able to manage multiple priorities and work independently.

Education/Experience:

High School degree plus a minimum of 2 years customer service experience required. Previous experience working as an effective member in a team environment required.

Exhibit Pg. 2

Civ. A. No. 05-11619-RGS

**Marine Biological Laboratory
Position Description**

Date: November 15, 2000

Page:

Title: Front Office Assistant (Weekday)

Revision:

Position Code:

Grade: 7 Non Exempt

Reports to: Director of Housing Services and Conferences

EEO Code:

Job Summary: This position greets and processes clients of the Marine Biological Laboratory, provides office management functions, and is responsible for the daily financial processes of the Office of Housing and Conferences.

Major Duties:

- 1) Greet and process clients of the MBL.
- 2) Process client payments for Housing and Conferences.
- 3) Perform daily audit including processing check ins and check outs, running and verifying accuracy of pre-audit report, running daily audit, and transferring information to accounting.
- 4) Print necessary reports from automated housing and conference system and distribute to appropriate departments.
- 5) Coordinate parking permit process. Manage parking permit database and issue parking permits according to established MBL policies.
- 6) Manage various cash operations and prepare daily bank deposits.
- 7) Oversee key inventory for housing facilities and laboratories. Request replacement keys as needed.
- 8) Issue laboratory keys.
- 9) Schedule meeting rooms for use by internal and external clients.
- 10) Maintain office supply inventory. Order supplies as needed or requested.
- 11) Answer and direct calls through the switchboard and two way radio. Answer and direct calls from office telephones as needed.
- 12) Handle customer complaints.
- 13) Assist as required in providing services to conference groups.
- 14) Assist with emergencies. Contact appropriate personnel and write incident reports as needed.
- 15) Perform clerical duties as needed.
- 16) Assist with the training of evening/weekend front desk staff.
- 17) Perform other duties as required and/or assigned.

Skills Required:

Must have computer skills preferably with Windows NT and word processing. Previous customer service experience required. Previous experience in a hotel setting desirable. Must have excellent organizational and clerical skills. Must demonstrate strong interpersonal skills and a pleasant and cooperative manner. Must be self-motivated, flexible, and able to communicate effectively with diverse populations. Must be able to manage multiple priorities and work independently.

Education/Experience:

High School degree plus a minimum of 2 years customer service experience required. Previous experience working as an effective member in a team environment required.

Exhibit #1 Pg. 3
Civ. A. No. 05-11619-RGS

Marine Biological Laboratory

EQUAL OPPORTUNITY, AFFIRMATIVE ACTION, AND DIVERSITY POLICY

Initiated by: Equal Employment Opportunity Coordinator
Approved by: MBL Director/CEO
Date: April 20, 1991
Revision: #3, March 18, 2004
Distribution: All MBL Employees

1.0 Introduction

Equal opportunity, affirmative action, and diversity are important components to the foundation of a forward-thinking, productive research community. While similar in theory, each of these three concepts addresses a specific factor in establishing a respectful workplace. This document represents the Marine Biological Laboratory's commitment to upholding these concepts. It includes the Laboratory's policies and plans for maintaining its status as an equal opportunity employer, for enhancing its affirmative action initiatives, and for supporting its goal to broaden the diversity of its community.

Equal opportunity focuses on the laws and government regulations that prohibit discrimination, especially Title VII of the Civil Rights Act of 1964. It guarantees that no one will be denied access to employment or educational opportunities at the Laboratory based on race, color, religion, gender, disability, age, national or ethnic origin, sexual orientation, marital, parental, or veteran status.

Affirmative action is the proactive side of equal opportunity. It requires institutions like the Marine Biological Laboratory to take positive steps to develop policies, programs, and procedures that put equal opportunity laws into action. To do this, the Laboratory has prepared a written Affirmative Action Plan. The plan is updated and reviewed annually to assess the efforts made by the Laboratory to hire and promote minorities, females, qualified individuals with disabilities, Vietnam veterans, special disabled veterans, and other veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. From this information goals are established for expanding these opportunities in the upcoming year.

Diversity, unlike equal opportunity and affirmative action, has no legislative basis. Rather it is a fundamental attitude that the Laboratory holds towards providing a workplace where differences are valued and respect and tolerance of others is practiced. Such a philosophy gives each of us the opportunity to learn from others with different experiences and backgrounds while examining our own values and assumptions. Through diversity we learn to better understand ourselves and those from other cultures and perspectives.

While the Marine Biological Laboratory stands firm in its commitment to the policies and philosophy described in this document, the programs defined here were developed with the expectation that they would be reviewed and updated regularly.

EXHIBIT #2 Pg. 1
Civ. A. No. 05-11619-RGS

2.0 Policy Statements

2.1 Policy on Equal Opportunity

It is the policy of the Marine Biological Laboratory to provide equal opportunity employment to all employees and applicants for employment. No person working at the MBL is to be discriminated against in employment because of race, color, religion, gender, disability, age, national or ethnic origin, sexual orientation, marital, parental, or veteran status. Additionally, the MBL does not discriminate in admission to, access to, employment in, or treatment in, any of its educational programs or activities. This policy applies to all terms, conditions, and privileges of employment including, but not limited to, hiring, probation, training, placement and employee development, promotion, transfer, compensation, benefits, educational assistance, layoff and recall, social and recreation programs, employee facilities, termination, and retirement.

2.2 Policy on Affirmative Action

It is the policy of the Marine Biological Laboratory to have a written affirmative action plan. The purpose of this plan is to achieve prompt and full utilization of minorities, females, individuals with disabilities, and veterans at all levels and in all segments of the work force. The results of this plan are reviewed annually, and the program is modified as necessary to achieve its stated objectives. Reasonable accommodation will be applied on a case-by-case basis for individuals with disabilities and disabled veterans, and there will be no reduction in compensation for individuals with disabilities or veterans.

2.3 Policy on Diversity

It is the policy of the Marine Biological Laboratory to promote a diverse population among its employees, visiting scientists, faculty members, and students. In so doing the MBL affirms its belief that the prominence and integrity of the Laboratory is best served by employing and educating individuals of diverse backgrounds and cultural heritages. It is the Laboratory's objective to promote a community where individuals respect all differences and recognize the positive outcome of learning from one another.

2.4 Policy Performance

It is the responsibility of the Marine Biological Laboratory's Equal Employment Opportunity Coordinator to formulate, implement, coordinate, and monitor all efforts in the area of equal employment opportunity, affirmative action, and diversity. The EEO Coordinator is appointed by and reports directly to the Director/CEO of the MBL. The Director/CEO supports these policies and annually reviews the affirmative action plan with authority to make modifications as necessary. Inquiries regarding these policies or their implementation should be directed to Jane MacNeil, EEO Coordinator, ext. 7378, eeo@mbi.edu.

3.0 Implementation of Program

3.1 Responsibilities of the Equal Employment Opportunity Coordinator

The EEO Coordinator's responsibilities include, but are not limited to, assisting management in collecting and analyzing employment data; developing policy statements, affirmative action plans, and recruitment techniques designed to comply with the equal employment opportunity policies of the MBL; complying with various statutory record-keeping and

notice requirements in order to ensure full compliance with all employment-related statutes and regulations; preparing an annual review of the MBL's affirmative action plan and the results achieved for submission to the Director/CEO; assisting supervisory personnel in arriving at solutions to specific personnel problems; serving as liaison between the MBL and government agencies, minority and women's organizations, and other community groups; and keeping management informed of the latest developments in the entire equal employment opportunity area.

3.2 Responsibilities of Management and Supervisors

While the overall authority for implementing these policies is assigned to the EEO Coordinator by the Director/CEO of the MBL, an effective implementation of these policies cannot be achieved without the support of management/supervisory personnel and employees at all levels. Management and supervisory responsibilities include, but are not limited to assisting in the identification of problem areas and establishment of goals within their respective departments; reviewing qualifications of all employees within their jurisdiction to insure minorities and women are given full opportunities for transfers and promotions; periodically reviewing of procedures for hiring, training, and promoting to remove impediments to the attainment of goals and objectives; assuring that all minority and female employees are afforded full opportunity and are encouraged to participate in all MBL-sponsored educational, training, recreational, and social activities; and taking action to prevent harassment of employees placed through affirmative action efforts.

3.3 Responsibilities of the Employees

For these policies to be effective, it is the responsibility of every employee to report any act of discrimination, harassment, or retaliation that they witness involving themselves or a fellow employee to their supervisor or to the EEO Coordinator Jane MacNeil, ext. 7378, eeo@mbledu.

3.4 Communication of Policies and Programs

The Equal Opportunity, Affirmative Action, and Diversity Policy is distributed to each new employee through the Human Resources Office and to visiting scientists, faculty members, and students through the Education Office. A copy of the Policy appears in Section A.2. of the MBL Policy Book, is posted on community bulletin boards, and can be obtained from the Human Resources Office. Additionally, a copy of the Affirmative Action Plan for Individuals with Disability and Veterans is available for review in the Human Resources Office.

4.0 Complaint Procedure

4.1 Disclosure

Any member of the MBL community who believes he or she has been discriminated against based on race, color, religion, gender, disability, age, national or ethnic origin, sexual orientation, marital, parental, or veteran status is encouraged to report such conduct immediately. So that the individual making the report may feel comfortable enough to candidly disclose any discriminating conduct, the following persons are available to take reports: the individual's supervisor, the supervisor's supervisor, any member of

Exhibit #2 Pg. 3

Civ. A. No. 05-11619-RGS

Management, the Human Resources Director, or the EEO Coordinator. Regardless of which person the individual chooses, the EEO Coordinator is to be informed of every case of alleged discrimination.

4.2 Investigation

Once a discrimination complaint has been disclosed, a prompt and thorough investigation will follow. The guidelines for confidentiality will be reviewed with the person making the complaint. The complaint will be put in writing, and the person making the complaint will be asked to verify its accuracy. Persons directly named in the complaint, as well as any possible witnesses, will be interviewed. All members of the MBL community are expected to cooperate during an investigation.

4.3 Appropriate Action

Based on the information gathered during the investigation, the EEO Coordinator will recommend appropriate action to the MBL Director/CEO. Appropriate action in a discrimination complaint may include discussion, monitoring of the situation, counseling, mediation by a third party, formal discipline, ban from MBL property, or termination of employment. The Director/CEO will make the final decision as to the appropriate action to be taken. The person making the complaint and the person whom the complaint was made against will be advised of the Director/CEO's decision as promptly as possible.

4.4 Retaliation and False Allegations

Retaliation against anyone reporting a discrimination complaint or assisting in an investigation is unlawful and will not be tolerated by the MBL. Any attempt to retaliate so as to influence the investigation process, or to affect the persons involved in the process after appropriate action has been determined, is a serious offense and will be subject to disciplinary action. Similar serious disciplinary action will be taken against anyone making false accusations of discrimination.

5.0 Policy Clarification and Updates

Policy clarification and updates are available from the EEO Coordinator.

Exhibit #2 Pg. 4

Civ. A. No. 05-11619-RGS